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Accessing Information versus Analysing Policy:

Using the FOI Act in the United Kingdom

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Abstract

In this chapter I address problems confronted by researchers who attempt to exercise their right to request information under the United Kingdom's Freedom of Information Act (2000), namely the struggle to obtain information from obstructive government departments coupled with the difficulty of using the information that governments care to disclose. I examine two cases which, in different ways, illustrate the nature of these problems. The first case arises out of my research into the policy of 'language analysis' used by the UK Home Office; this policy adopts the language of rationality and science as a way of masking political decisions to refuse protection to asylum applicants. The second case examines an attempt to use the FOI Act to force the UK government to disclose information about secret meetings between the Home Office and the government of Eritrea. Following the work of Wedel et al (2005) I attempt to see through/unmask the policy claims of the British Home Office, a powerful bureaucracy, to understand what officials actually do. Both cases illustrate how institutions withhold, block, stymie and deny access to information about their activities and what research is capable of revealing about their actions and the impact of government policy.

Key words: FOIA, policy analysis, Language Analysis, power.

Implementation of the United Kingdom's Freedom of Information Act (FOIA) was delayed five years due in large part to Prime Minister Blair's concern that the Act would have a 'chilling' impact on the conduct of government business. Worthy & Hazell's (2017) review of how the Act has been used concluded that 'the effects of access to information laws are nuanced and changeable' and that the impact of the Act is shaped by complex and contradictory processes. They argue that the use of the FOIA has been relatively high and that the members of the public have made the most use of FOIA (to obtain personal information), followed by journalists, businesses and academics. The authors concluded that the Act has made 'government more transparent and [it had] increased accountability' though it 'has not had any significant impact on the decision-making processes' (p. 36).

While researchers are using their rights under the FOIA to obtain information on government policy and policy implementation, this task is complicated by the volume of

government publication, by 'open government' initiatives that release vast amounts of information of varying value into the public domain and by the tendency of officials to refuse to disclose politically significant information. Ultimately the effective use of the Act is also limited by the narrow focus of much research and by the failure of researchers to co-operate and work together. The problems encountered since it became possible to use FOI for research purposes mean that the task of moving 'beyond official discourse' to understand the nature and impact of government policy (Walby & Larsen 2011a & b; Wedel et al 2005) remains as elusive as ever.

This paper examines two cases in which FOI requests played a critical role in an attempt to go 'beyond official discourse'. The first case concerns official claims involving the use of 'expert knowledge' to analyse the spoken language of asylum seekers to determine their 'nationality' (and refuse them asylum). The second case illustrates how a government can cite 'national security interests' etc. to justify non-disclosure, and how ineffective appeals to the Information Commissioner, the principle regulator, are. Nevertheless both cases also illustrate how research can 'see through' the policy claims made by officials even when they fail to disclose critical information.

UKBA's reliance on 'expert', 'scientific knowledge' to assess asylum applicant's language

In 2007 I began a two year research project to ethnographically map and analyse the various institutions and actors operating in the United Kingdom's 'asylum field' in order to understand how they influence asylum policy and decisions on individual asylum claims. It was clear from the outset that analysing a representative sample of asylum applicants – approximately 25,000 asylum application were made in 2006 (UK 2016: chart 2.1) – was beyond the scope of the project. We focused our efforts and resources on following a limited number of asylum claims working their way through the 'asylum system'. While this empirical focus provided detailed information about individual cases it was evident that we would also need to interview individuals (e.g. asylum applicants, lawyers, officials, NGOs etc.), analyse documents and policy statements and make FOIA requests[1] to understand the work of the key government departments directly engaged in asylum-related policy work, e.g. the Home Office, the Ministry of Justice and the Government Legal Department (Campbell 2017; Savage & Hyde 2014).

[1] Between 2007 and 2010 five attempts to appeal against the refusal of FOI officers to disclose information (including three appeals to the Information Commissioner) were unsuccessful.

One strand of this project focused on 'language analysis' (hereafter LA) which was authorized under sec. 19 of the Race Relations Act (1976).[2] The Act was amended in 2000[3] to allow government to suspend anti-discrimination laws to 'investigate' and take action to prevent foreign nationals from entering or seeking asylum in the UK. There rapidly followed a number of 'Ministerial authorizations' – which take the form of making a brief statement either to Parliament or the House of Lords – setting out the exemption being sought. Authorizations were initially made for a specific period, e.g. 4 months[4]; however Ministers have authorized language analysis continuously since 2000.

What is 'language analysis' and how is it implemented? According to published Asylum Policy Instructions, the purpose of LA was to provide 'expert evidence' to identify the place of origin of asylum seekers who were believed to be making false claims. The policy instruction sets out a step-by-step procedure which officials are supposed to follow in examining the spoken language of individuals who claim to be from specific countries. The process required officials to identify suspect asylum applications and to set up a 20-30 minute phone interview between the asylum applicant and an 'expert linguist'. Immediately following the interview the 'expert' sends the official a preliminary analysis, followed 3-5 days later by a detailed report setting out the 'probability' that the asylum applicant speaks language 'X' (expressed with varying degrees of certainty). Officials were required to use the test result, together with other information available to them, to decide an asylum claim.

My research on this policy was based on the analysis of asylum appeals where LA evidence was submitted by the Home Office, analysis of case files, discussions with immigration barristers and material disclosed by the Home Office through FOI requests.[5] I concluded (Campbell 2013) that: (a) contrary to policy statements officials did not follow their own policy guidelines which set out how the policy was supposed to be implemented (e.g. the criteria for selecting the individuals to be tested was too broad); (b) an applicant's spoken language was not analysed by 'experts' (because analysts were 'native speakers' who were 'supervised' by trained linguists and because in certain cases applicants were not

[2] See: http://www.legislation.gov.uk/ukpga/1976/74/pdfs/ukpga_19760074_en.pdf.
[3] See: http://www.legislation.gov.uk/ukpga/2000/34/notes/division/4/4.
[4] See: https://publications.parliament.uk/pa/cm200708/cmhansrd/cm080205/wmstext/80205m0002.htm.
[5] Disclosure was in response to the following FOI request on 20 August 2009 (Home Office Ref. 11560) and on 28 July 2010 (Home Office Ref. 15403).

interviewed in their 'native language'); and (c) officials relied on LA reports to the exclusion of other information available to them to (unlawfully) refuse an individual asylum.

Decisions based on LA evidence alone were problematic because, contrary to an unequivocal statement endorsed by professional linguists, LA is not able to conclusively determine the nationality of individual asylum applicants (LANOG 2004). The best that it could do, if appropriate procedures were meticulously followed, was to establish the region from which an asylum applicant came. This limitation is important for two reasons. First individuals who come from the same country cannot be assumed to speak the same language or speak a standard dialect of a language. Second, when individuals are displaced outside their country of origin by war/violence, their spoken language(s) is gradually modified to include elements from their 'new' social environment. Displacement has two implications for refugees. First residence in a second country does not invalidate an individual's fear of persecution and right to claim asylum. Second, such individuals would need to have his/her entire 'linguistic biography' (i.e. all their spoken languages) examined which cannot be done in the 20-30 minute interview relied upon by the Home Office.

In addition the four pieces of information disclosed by the Home Office in response to my FOI requests provided little empirical justification for the policy. The first item disclosed was a 15 page summary of a 2003 'evaluation of Language Analysis Pilot' that used four different commercial firms to provide LA. The pilot sought to evaluate the operational usefulness of LA in assisting UKBA to detect false claims, the extent to which it assisted officials to decide claims, the extent to which it created evidence that would influence the outcome of legal appeals to the Asylum & Immigration Tribunal and therefore its usefulness to the Home Office in deporting applicants from the UK. A total of 100 individuals were tested (51 from Afghanistan, 63 from Somalia and 39 from Sri Lanka). Despite the limited number of individuals tested and the lack of independent evidence supporting the operational value of LA, the Home Office awarded a contract to Sprakab, a Swedish commercial firm, to undertake LA. A purported reason to adopt LA was that this evaluation indicated that 30% of applicants claiming to be from Somalia were falsely 'posing' as Somali nationals. It is important to note that professional linguists were not asked about the methods used for LA or about the reliability of LA findings.

The second document disclosed was a table listing the number of individuals who had been tested between 2007 and 2009 and the results of LA testing. The list indicated that 2,628

individuals from 39+ countries were tested (the five largest nationalities in declining order were Somalia, Afghanistan, Palestine Authority, Kuwait/Bidoon and Sudan). The document did not provide any information about the usefulness of LA in official decision-making or how LA evidence was viewed in the courts. If anything, the document strongly suggests that individuals were indiscriminately selected to be tested for language (which indicates the subjective nature of the criteria used to select individuals for analysis).

The third document that was disclosed was a 4 page 'Eritrean intake report' written in 2008 summarizing LA tests and the outcome of 146 Eritrean cases. LA determined that 44% of the individuals tested spoke 'Amharic' which was identified as an 'Ethiopian' language.[6] The report concluded that 'it cannot be said that LA is helping case-owners to achieve their performance targets, neither does it appear to be a factor in the decision-making processes.[7]

The fourth document disclosed was a 3 page 'overview' of 785 Somali cases that was written in 2008. This document summarised limited information about LA tests and while it waxes lyrical about detecting fraudulent claims – primarily by Kenyans (51%) – it cites no reliable data to support the validity of LA or how LA evidence was evaluated in appeals heard in the Tribunal. However the document underlines the pre-occupation of Home Office with detecting fraud, influencing the outcome of asylum appeals and removing failed applicants.

On the basis of the all evidence available to me at that time I concluded that 'the language of science' adopted by the Home Office to justify language analysis was used 'to obfuscate flawed assumptions about language use and capricious bureaucratic practices' (Campbell 2013: 686). In effect the Home Office was attempting to transform a political problem, namely border enforcement, into a technical problem 'by recasting it in the neutral language of science' which could only be addressed by 'experts' (i.e. not officials). LA reports would, it was hoped, be accepted as scientifically valid evidence by the courts thereby justifying official decisions to refuse individuals asylum.

Legal appeals to the Tribunal involving claims where LA evidence was used to refuse an individual asylum sought to challenge the validity of the procedures used by Sprakab, the

[6] Amharic was the official language in Eritrea between the late 1950s and 1991 because Eritrea was an Ethiopian province (Woldemikael 2003). Between 1998 and 2000 Ethiopian deported approximately 100,000 ethnic Eritreans to Eritrea whose first language was Amharic (Campbell 2014).

[7] In part because there was other evidence negating the importance of LA.

Swedish firm contracted to analyse an asylum applicant's spoken language. Barristers successfully argued that the 'experts' used to interview and analyse an asylum applicants spoken language lacked the training and the competence to carry out LA (Campbell 2013: 682-f). However in 2010 this line of attack was undermined by the Asylum & Immigration Tribunal when it decided the case of *RB (Linguistic Evidence – Sprakab) Somalia [2010] UKUT 329 IAC.*[8] Rather than looking at the key issues raised by the case –i.e. dialect, 'language mixing', claims about deficiencies in linguistic knowledge, and the failure of Sprakab to interview the applicant in her 'native' language – the Tribunal focused on the need to maintain the anonymity of Sprakab's 'analysts despite the fact that none of the firms 'native speakers' possessed professional linguistic qualifications and despite the firms failure to comply with IAFPA guidelines in conducting language analysis (LANOG 2004).

The 2010 case emboldened the Home Office's to continue its LA policy. However new issues have emerged which undermine the validity of LA. First there is virtually no published research that examines the techniques relied upon by language analysis to determine the country of origin of asylum seekers. Indeed the two commercial firms which are contracted by the Home Office for this purpose – Sprakab and Verified – have not published any material about their methods or the reliability of their research.

Interestingly OCILA, which undertakes LA for the Dutch Immigration and Naturalisation Service, has addressed this issue. Cambier-Langeveld (2016), an advisor and former linguist who works for OCILA, observes two key limitations of LA which are relevant to the way that the Home Office use LA. First before a language can be analysed, it needs to be adequately documented. However, many of the languages spoken by asylum applicants are not documented. OCILA have no problems in analysing what they refer to as 'clearly audible and well described differences between northern Somalia and southern Somalia language varieties' (p. 29). However, many of the individuals who were tested by the Home Office, including 'RB' whose case was examined in 2010 by the Tribunal, were <u>not</u> Somali speakers; they claimed to be speakers of 'Kibajuni' (a dialect of Kiswahili; Canada 2005). Furthermore these individuals were <u>not</u> interviewed in their 'mother tongue', as claimed in the Home Office Asylum Policy Instruction, but in Kiswahili (see Campbell 2013: 682-683). This practice violated the basic assumptions of LA. If individuals are not interviewed in their 'native language', they tend to 'accommodate' their speech to conform

[8] See: http://www.refworld.org/cases,GBR_UTIAC,4ca36a1b2.html.

with the language of the interviewer, a situation which can easily result in a finding by an 'analyst' that the individual did not speak their claimed language. Furthermore because of decades-long conflict in Somalia many Kibajuni speakers have been displaced into Kenya where Kibajuni, their 'native language', will have been affected by interaction with speakers of a different dialect of Swahili. This means that their entire 'language profile' should have been tested (Cambier-Langeveld 2016: 30-f).

Second, OCILA argues that LA on Eritrean nationals is not warranted because of difficulties in distinguishing between the spoken Tigrinya; speakers of this language reside in Ethiopia and in Eritrea. Analysis is difficult 'because of the shared history of these countries and the patchy geographic backgrounds of many people in that area' (p. 30). For this reason OCILA does not undertake LA on Eritreans.[9] In short, to the extent that the Home Office refused asylum to some Eritreans and to Somali Kibajuni speakers on the basis of LA alone, that decision was wrong and may have resulted in individuals being wrongly denied asylum.

Since LA was initiated in 2000 only one case has reached the UK's Supreme Court. In *Secretary of State for Home Department v MN and KY (Scotland) [2014] UKSC 30 (6 March 2014)*[10], the Justices set out guidance which the Tribunal should use to decide cases which rely upon language analysis reports submitted by the Home Office. The Justices made it clear that, contrary to *RB (Linguistic Evidence – Sprakab) Somalia [2010] UKUT 329 IAC,* evidence critical of LA reports should be made available and that the Tribunal should carefully assess <u>all</u> the evidence to determine 'the strength of the reasoning and the expertise used to support them' (¶48). In short, and not before time, 'expert' LA evidence was finally subject to the same requirements as all other types of expert opinion-based evidence.[11]

[9] OCILA does not undertake LA for individuals who claim to live on or near a national border because the distribution of a language is not coterminous with national boundaries nor does it test individuals who claim to have left their area of origin at an early age (Cambier-Langeveld 2016: 30). After a protracted 30 year insurgency Eritrea gained its independence from Ethiopia in 1991.

[10] See: https://www.supremecourt.uk/cases/uksc-2013-0202.html.

[11] At ¶51 the Supreme Court identified a number of limitations of LA reports which needed to be explicitly addressed in appeals including: information about the expertise and methods used; the geographical distribution of dialects (based on verifiable sources); the need to make a language recording available for independent experts to examine; information on the limitations of the analysts undertaking LA; whether the identity and qualifications of analysts need to be identified; and an assessment of the extent to which LA does/does not comply with published guidelines (i.e. LANOG 2004).

Nevertheless the Home Office has continued to make use of LA in deciding asylum claims. A recent FOI request[12]to the Home Office disclosed the current version of the Asylum Policy Instruction on LA and a heavily redacted 2012 report which purports to analyse the costs and benefits of LA testing and which provides statistics on the number and nationality of individuals tested between 2011 and 2016 (this is summarized in Table 1, below).

If we compare the Asylum Police Instruction published in 2010 with the 2017 version (Home Office 2017a), the recent version acknowledges the statutory requirement placed on the Home Office to 'safeguard and promote the welfare of children'[13] (including the need for a 'responsible adult' to attend the LA interview with the child), the need for officials to obtain 'consent'[14]from individuals before they can be tested, and the need to recognize medical/disability grounds which may prevent an individual from attending and/or completing LA.[15] The new API partially reflects the 2014 Supreme Court decision (discussed above) by stating that Home Office officials and the Tribunal must not rely solely on language analysis in determining an asylum claim. Other than these changes, the procedure in the 2017 API mirrors earlier guidance. Even so, there are good reasons to be sceptical about the 'scientific' 'export' basis of Home Office LA because, as my earlier research found,

[12] Home Office reply to my FOI Request no. 46586 dated 4 January 2019.
[13] This requirement stems from the incorporation of the UN Convention of the Rights of the Child into sec. 55 of the Immigration Act 2009. However in England and Wales, and probably in Scotland and Northern Ireland, the Home Office does not comply with the policy (Campbell, n.d.).
[14] The consent form was disclosed to me in 2010. The form states: 'The purpose of the language analysis interview was explained to me. I understand that the analysis will be used to determine whether I am from the place I claim. I understand that a copy of the tape may be sent to me/my representatives and the Immigration Appellant Authority. I do not agree/agree to have a language analysis interview and to have my statements recorded and the tape passed to an expert for analysis.' Given linguistic and cultural differences between officials and asylum applicants, this procedure does not adequately explain the test to asylum seekers nor can it secure 'informed consent' (see, for example, http://www.esrc.ac.uk/funding/guidance-for-applicants/research-ethics/frequently-raised-questions/what-is-freely-given-informed-consent/ (accessed on 16 March 2017).
[15] On 4 September 2017 I made an FOI request to the Home Office requesting information about whether a responsible adult had attended interviews with children, whether officials had always obtained informed consent from the individuals tested, the extent to which applicants with a medical/disability were interviewed (or not). That request was refused on the basis of the cost of retrieving the relevant information. In January 2018 I sent four separate FOI requests (one for each issue) in the hope that this might assist FOI officers by narrowing the work required. Instead the four requests were treated as a single request and were refused on the grounds of costs.

neither officials nor the commercial firms which are contracted to provide language analysis necessarily adhere to the procedures set out in the API. In short policy guidance on and the use of LA does not appear to have changed since 2010.

A brief look at the Home Offices analysis of the cost/benefit[16]of using LA shows that it relies on limited data for the period 2008 and 2009 when, at most, less than five percent of asylum applicants were subjected to LA (LA was used primarily to examine Afghan, Eritrean, Kuwaiti, Palestinian and Somali claims). Despite redacting nearly all the statistical data in the original report, it is clear that the analysis is methodologically flawed. At no point are questions raised about the criteria used by the Home Office to select individuals to be tested, nor do the authors of the report question the reliability of LA testing. Instead various data is provided in the form of tables which; (a) purport to compare the results of LA tests against the total number of applicants from a specific country and against the 'asylum grant rate' for that country; (b) compare initial decisions where LA was used as against initial decisions in cases when LA was not used; (c) demonstrate the usefulness of LA for case workers in arriving at a timely decision; and (c) the show the usefulness of LA in preventing 'abusive' asylum claims and 'nationality swapping'.

The simple fact is that the number and type of claims that were tested do not provide a large enough sample to arrive at valid conclusions. Indeed a careful reading of the report clearly shows that the Home Office has insufficient empirical data to conduct a cost benefit analysis. For example, in summarizing its conclusions the report states that 'changes to asylum intake over time are not easy to explain' (which means that LA could not have been a deterrent) and that 'Tribunals and courts did not give significant weight to LA' (p. 13). Or, '[t]his comparison will not provide a full picture because it was not able to take into account other differences in case types that could affect asylum case outcomes…' (p. 15). Or, '[a] comparison of case outcomes is not possible but the results could be skewed...' and 'findings should be treated as indicative' (p. 16). Indeed the report states that 'LA does not seem to be associated with any difference in appeal outcomes' (p. 17). While it is possible that after 2010 LA evidence was more widely accepted as a valid form of evidence by the Tribunal, this report does not examine data for this period. In short, the report fails to provide any evidence that would support the continued use of LA.

[16] It can be accessed at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257177/language-analysis.pdf.

Home Office disclosure of the total number of individuals tested between 2011 and 2016 (see Table 1, below) indicates that 3,806 individuals were tested and that most of those tested came from five countries. However a comparison of Home Office statistics on language testing with official statistics on asylum applications by year and nationality[17]suggests there is no clear correlation between LA (i.e. as a means of deterring fraudulent claims) and changes in the number of asylum applicants from the top five countries from which applicants claim to have originated from. Indeed the variation over time in the number of people tested and the nationalities of those tested suggests that individuals were randomly chosen.[18]

What can we conclude from the recent information disclosed by the Home Office? First it should be clear that the language tests relied upon by the Home Office lack a scientific basis: there are no independent analyses of the methodologies used to analyse language, nor are there studies which indicate that the procedures produce reliable and accurate findings (UK 2015). Equally important, and unlike forensic language analysis in the criminal courts, LA is not subject to statutory regulation by the UK's Forensic Science Regulator.[19] Internal Home Office reports and analysis have consistently failed to establish the value of LA in determining the country of origin of asylum seekers, and the firms contracted to do this work consistently fail to follow professional guidelines. On a final note it is possible to estimate the financial cost of using LA to the public purse. Based on information in disclosed documents,[20] for the period 2011 to 2016 between £1.5 million to £2.6 million pounds has been paid to private firms to undertake language analysis. This estimate does not include the time spent by Home Office officials making use of LA, nor does it include litigation costs when Home Office decisions are appealed to the Tribunal or appellate courts. Finally the human cost to asylum seekers of being refused protection because of LA is not included.

[17] See: Home Office 2017b.
[18] The API sets out only two criteria which officials should use to identify individuals for LA, namely if there are doubts about an individuals claimed country of origin and if a claim is 'inadequately documented'. However nearly all asylum claims are undocumented and Home Office officials do not possess the language/linguistic skills which might enable them to identify applicants involved in 'nationality swapping'.
[19] See: https://www.gov.uk/government/organisations/forensic-science-regulator. In email correspondence with the regulator I have confirmed that LA evidence relied upon by the Home Office is not regulated and that procedures used by the commercial firms it subcontracts for the tests are not standardized etc.
[20] The redacted 2012 cost/benefit analysis (p. 15) states that the Home Office spent £400 per test, although the National Audit Office estimated the cost at £700 per test.

Table 1. Language Analysis tests conducted between 2011 and 2016:

Total number by year and by largest nationality tested

	2011	2012	2013	2014	2015	2016	Total
Kuwait/Bidoon	9	57	155	8	373	16	618
Palestine Authority	7	25	37	4	40	12	125
Somalia	4	29	30	5	16	8	92
Syria Arab Republic	1	31	333	46	947	982	2,340
Eritrea	1	6	21	0	33	3	64
Afghanistan	0	3	22	3	52	18	98
Iran	0	10	20	7	40	101	178
Iraq	0	0	4	0	10	20	34
Total number tested	31	186	665	94	1,650	1,180	3,806
Estimated cost of LA	£12,400/ £21,700	£74,400/ £130,200	£266,000/ $465,500	£37,600/ £65,800	£660,000/ £1,155,000	£472,000/ £826,000	£1,522,400/ £2,664,200

Secret meetings and asylum policy

In 2015, and following several years in which the UK recognized that human rights abuses in Eritrea provided sufficient grounds to grant asylum to Eritrean nationals, the Home Office suddenly announced a new policy which stated that Eritrean nationals could safely be 'returned' to Eritrea without contravening their human rights (Home Office 2015a & b). In arriving at this decision the Home Office relied on a report produced by the Danish Immigration Authority (2014) which was the subject of ongoing disputes in Denmark that led to the policy being withdrawn by the Danish government in 2015.

Home Office case officers, who had been warned in advance of an impending change to asylum policy, delayed their decisions on Eritrean claims. However with the announcement of the new policy in March 2015 case workers summarily rejected the majority of Eritrean asylum applications. Their decisions transformed asylum applicants into destitute 'failed' asylum seekers who were subject to deportation. The situation led to an enormous increase in the number of appeals to the Tribunal against Home Office decisions, of which 87 percent[21]were eventually overturned by the Immigration and Asylum Tribunal (see Table 2, below, though there remains a large backlog of claims which have still not been

[21] See: 'Home Office Eritrea guidance softened to reduce asylum seeker numbers' (*The Guardian*, 22/1/2017).

heard). Since each appeal costs the taxpayer approximately £3,300[22] the cost of litigation caused by the Home Office change of policy was estimated at £5.5 million.

Table 2 Asylum appeal statistics on Eritrean claims, 2014-2016[23]

Year	Number of appeals	Appeals allowed	Percentage of appeals allowed[24]
2014	172	50	29%
2015	1737	459	26%
2016	722	1,206	167%

In mid-2015 an FOI request was made by Mr. X to secure information from the Home Office and the Foreign Office about meetings which officials had held with Eritrean, Somali, Ethiopian and Egyptian officials in late 2014 to discuss migration. The Home Office failed to reply to this request. Mr. X appealed to the Information Commissioner who required the Home Office to respond. Arguing that disclosure would 'prejudice to effective conduct of pubic affairs' and would 'violate personal information', the Home Office confirmed that it held such information but refused to disclose it. In April 2016, and under the threat of litigation, the Home Office confirmed the names of three senior officials who met with senior Eritrean officials, but it refused to disclose additional information. Mr. X appealed to the Office of the Information Commissioner who upheld the Home Office's decision not to disclose information on the basis of a public interest test. In mid-2016 Mr. X appealed against unsuccessfully the decision by the Information Commissioner, the Foreign Office and the Home Office not to disclose 'notes of those meetings'.

In late 2016 Mr. X asked me to provide a *pro bono* 'expert report' that reviewed information in the public domain about Eritrean international relations, the human rights situation in Eritrea and the history of UK-Eritrea relations. In October 2016 my report together with further legal argument was submitted in an appeal to the General Regulatory

[22] See: Kate Lyons 'Hundreds of Eritrean asylum applications still 'incorrectly' refused' (*The Guardian*, 28 July 2016). Note that the information she relied upon came from an FOI request.
[23] Source: UK 2016.
[24] The large percentage of successful appeals in 2016 reflects, in part, the backlog of appeals that had been built up in 2015.

Chamber Information Rights Tribunal. This appeal initiated a slow process of disclosure by the Home Office[25]in their attempt to avoid litigation.

Disclosure revealed that on 27 November 2014 a meeting was held in Asmara between the Eritrean Foreign Minister and the UKs Immigration and Security Minister to discuss 'migration related issues'. A second meeting was held in early December 2014 in Asmara between the Eritrean Foreign Minister and a UK delegation that consisted of the British ambassador and officials from the Foreign and Home Office. The focus of the first meeting was to re-establish an agreement with Eritrea to facilitate the return of failed asylum seekers; the focus of the second meeting was to discuss how to control irregular migration 'between Eritrea and the UK'.[26]

The Home Office also disclosed short 'notes' taken by British officials during these meetings which indicate either an incredible naivety about Eritrea or a willingness to suspend judgement in order to pursue pre-determined policy objectives aimed at stopping Eritrean migration to the UK. The key points made by Eritrean officials at these meetings, which were accepted by UK officials,[27] were:

1. That Eritrean officials were 'taking the fingerprints of the entire population, although not all will get a new ID card for some time. We have details of every Eritrean …'
2. 'If someone has an Eritrean ID card or passport they are free to come back into Eritrea…'
3. 'People who have left illegally as children or [were]born abroad will have no problems on return – they need to prove their citizenship and get documents from the embassy'.

[25] The Foreign Office and the Home Office provided signed statements by two senior British officials in October 2016 which attempted to argue that disclosure would undermine the UK's relation with Eritrea. The central reasons given by both officials was the need to maintain trust with Eritrean officials in order to encourage them to participate in a bilateral agreement with the UK to facilitate the return of nationals 'with no right to remain in the UK' and to encourage officials to participate in the Khartoum Process to manage regional migration. Mr. X continues to seek further disclosure on related matters.

[26] The Home Office disclosed a witness statement by Anne Brewer, Country Returns Operator and Strategy Team, Home Office, dated 26/2/2015. The second visit involved additional meetings with Eritrean immigration officials, legal professionals and members of the diplomatic community.

[27] Note 1 is titled 'Meeting with three officials … 10 December 2014' and note 2 is titled 'Meeting with Yemane Gebreab, President's Advisor and UK delegation … 9 December 2014. Both take the form of quotes and/or bullet points.

4. ‘Everyone (all ages, including young children) requires an exit visa to leave the country…’
5. ‘To get one [an exit visa] someone should apply to the ministry with a demobilization certification (available from the Ministry of Defence) and 100 Nakfa.’
6. ‘There are no extra-judicial retributions on people who return having left illegally without doing national service. There is no clemency, but no harsh measures against them’. Finally,
7. ‘From November 2014 national service is reverting to duration of 18 months…’

On the basis of these meetings a ‘Diptel’/diplomatic telegram was sent from the British High Commission in Asmara to the Foreign & Commonwealth Office, London on 15 December 2014 and was quickly followed by an email to the FCO on 16 December affirming information contained in the ‘notes’. These communique reiterated that Eritrean officials showed ‘clearer political will to tackle migration’ but in return they requested development assistance that would help reduce migration[28](discussion included agreeing a Memorandum of Understanding with the UK enabling the UK to return failed asylum seekers (Eritrean officials apparently stated that the UK was ‘offering ‘preferential treatment’ to Eritreans’). The note also made it clear that British officials needed clarification about how failed asylum seekers would be treated on return to Eritrea.

This information, and possibly other undisclosed material, was passed to the Home Office in late 2014 and, together with the 2014 Danish Immigration Report, was used to issue a new Country of Information Guidance (CIG) Report in September 2015 (Home Office 2015 a&b). This report concluded that Eritreans should not be granted asylum in the UK because they would not be persecuted for a Convention reason on return to Eritrea.

Back in the UK there was some disquiet concerning the 2015 change of policy because it was known that the Danish authorities had withdrawn their Eritrea policy (which UK policy was supposedly based) and because the new policy did not reflect a balanced assessment of all the objective evidence available on Eritrea. In late 2015, during a period

[28] In fact Eritrea was in negotiation with the European Union to secure development assistance. A €200m development grant to Eritrea was announced in December 2015. See: https://www.tesfanews.net/eu-approves-new-development-package-to-eritrea/. Indeed the Eritrean government continues to insist that international co-operation to control illegal migration must be premised on receiving development assistance (‘Should Europe Pay to stop refugees from fleeing oppressive Eritrea?’ *The Guardian*, 28/4/2016).

when many Eritrean claims were being appealed to the Immigration and Asylum Tribunal, I was commissioned by the UK's Chief Inspector of Borders and Immigration to review Home Office policy on Eritrea (Campbell 2015). I concluded that the Home Office had selectively cited 'objective' evidence which it approved of, including the flawed report by the Danish Immigration Authority, but failed to consult or cite other evidence which did not support their conclusion. I concluded that the Home Office report was a biased and partisan evaluation of Country of Origin Information which violated the UK's adherence to European reporting standards (EASO 2012). I also concluded that the report represented a clear attempt to influence the Tribunal to refuse asylum to Eritreans.

Between December 2015 and May 2016 – i.e. from the publication of my review of Home Office policy and the first appeal scheduled to be heard by the Upper Tribunal (Immigration and Asylum Chamber) which was to examine current Home Office policy – the Home Office continued to refuse Eritreans asylum. In February 2016 the Home Office mounted a 'fact finding mission' to Eritrea which relied on the support of the Eritrean government to identify individuals to speak to and government translators to enable the 'team' to gather information. Unsurprisingly, the Fact-Finding Mission supported its 2015 policy (Home Office 2016). In May 2016 the Upper Tribunal convened to hear the case called '*MST & Others'*.[29] It took evidence about Home Office asylum policy on Eritrea as well as other objective evidence (including my review of Home Office policy) and evidence submitted by UNHCR. When the Upper Tribunal published its decision on this case in October 2016, the Home Office was forced to withdraw its 2015 policy and issue new guidance (Home Office 2017c; in effect it reverted to its 2014 position). Even so, many Eritreans whose claims were wrongly refused are still filing fresh asylum claims to secure protection.

What can we conclude about this particular case? First, following its 2015 report, the Home Office violated the UK's commitment to the Refugee Convention by unfairly refusing Eritrean asylum applications. Second, attempts to use the FOIA to obtain information about what government officials do in secret meetings and how they use secret information is nearly impossible to obtain. Officials argue that disclosure of information would 'prejudice the conduct of public affairs' etc. and they refuse to disclose relevant information. Official obstruction make it very difficult to successfully appeal to the courts to secure the right to information guaranteed under the FOI Act 2000 especially when the Information

[29] This case was '*MST and Others (national service – risk categories) Eritrea CG [2016] UKUT 00443 (IAC)', s*ee: http://www.refworld.org/cases,GBR_UTIAC,57fc91fc4.html

Commissioner, whose office is responsible for overseeing the Act, blithely supports officials (this situation needs to be reviewed).[30] Disappointingly the disclosure of secret meetings between UK and Eritrean officials attracted limited media attention and has had no impact on official decision-making[31]or on Home Office policy. Not even prolonged and costly litigation in the Tribunal affected asylum policy until the 2016 Country Guidance decision on 'MST & Others' was published. Then, and only then, did the Home Office withdraw its iniquitous policy and replace it with appropriate guidance.

Conclusion

It seems that the FOI Act is relatively little used by researchers looking at asylum or the work of the UK's Home Office. For instance, Burridge and Gill (2016) in their work on asylum-related legal aid and Connolly (2015) and Humphris and Sigona (2016) in their work on migrant/unaccompanied children in the UK have only used FOI requests to obtain basic information from the Home Office and local government. In each case, researchers ran up against a wall of indifference characterized by delays in responding to requests, not infrequent refusal to comply (citing the cost of disclosure) and, as Burridge and Gill (2016: 30) noted, 'bureaucratic inconsistency and chaotic self-contradiction' in terms of the information that was released (cf. Campbell 2017: 10-12). Viewed in this light, it is not surprizing that, pace Worthy & Hazel (2017) the FOIA has had a limited impact on government transparency, accountability or decision-making. Certainly, the case studies examined in this chapter illustrate how difficult it can be to exercise a right to information using the FOIA.

With regard to the UK asylum policy which requires asylum seekers to undergo 'language analysis', it should be clear that there is no evidence to support the claims made by the Home Office that LA can determine the country of origin of asylum seekers. There is no scientific evidence to support the use of LA for this purpose, and the Home Office's own internal reports provide no empirical evidence to support its continued use to deter/prevent fraudulent claims or to assist officials to make timely (much less correct) decisions on asylum applications. Furthermore an analysis of the financial costs and benefits (however calculated) of using LA provides no evidence that might support the continuing use of the policy. Perhaps the key value of its policy on LA has been to convince the Tribunal to accept LA

[30] As a recent review into how government departments deal with FOI requests reveals (Randall, 2015:3), the Home Office withholds information in 45 percent of requests.
[31] See: 'Home Office Eritrean guidance softened to reduce asylum seeker numbers' (*The Guardian*, 22 January 2017).

evidence. In any case, it should be evident that the Home Office has used the language of 'science' to obfuscate flawed assumptions about language use and obscure its own capricious bureaucratic practices to refuse individuals asylum.

The second case concerning the Home Office's refusal to comply with FOI requests, and the apparent unwillingness/inability of the Information Commission/Tribunal to force compliance, raises equally troubling issues. This case reveals how easy it is for officials to cite 'prejudice to the conduct of public affairs' to refuse FOI requests but it also reveals how British officials made use of information from secret meetings to alter government policy and how they are able to conceal their actions. The information discussed in secret meetings with Eritrean officials was twisted and combined with information from a discredited Danish report in an attempt to convince the Asylum and Immigration Tribunal that political conditions in Eritrea had changed and that Eritreans applying for asylum should be refused protection and 'returned' to their country of origin.

If we step back and compare the two UK cases with similar research elsewhere, we find strong similarities in the manner in which officials deal with FOI requests. There is clear evidence in Canada, Mexico, Brazil, India and elsewhere that governments attempt to undermine the perceived threat to their interests by altering key legislation and centralizing control to prevent or 'minimize the disruptive potential' of FOI law (Roberts 2005, 2010; Michener 2011). The measures adopted range from outright refusal to comply with FOI requests, deliberate attempts to delay a reply to requests, withholding some or all of the information requested, citing exemptions to justify why data should not be supplied and delaying compliance[32] until disclosure will have minimal impact of government decisions and policy. As Luscombe and Walby (2017) have noted, the political control of information can also be achieved by a lack of depth in the information that is eventually disclosed, by poor document archiving and retrieval practices – which is sometimes a deliberate tactic of FOI officers – and by redacting data that is disclosed. These practices ensure that disclosure, and any research which relies upon FOI disclosure, will be incomplete, partial and that publication will be delayed thereby ensuring that independent research becomes 'yesterday's news' and that it attracts limited media or public attention.

[32] The use of information technology enables governments to tag, track and control disclosure in ways which prevent or reduce the impact of adverse publicity on officials; see Roberts 2005.

It is worth, however, making four final points. First it is time to rethink how researchers use the FOI Act. As is apparent FOI requests are primarily an add-on to other methods in an attempt to get information from a government department (e.g. Dembour 2017). This is hardly an innovative use of FOI at a time when mixed-methods research has long been a standard of good quality social research. Second new forms of collaborative[33] academic research are clearly required to deal with the restrictions of information imposed by government departments at a time when research is being faced by growing resource constraints. Third researchers need to share the FOI data they obtain with others to foster better and more comprehensive research on government practices and policies. Finally, and regardless of the ways that governments stymie and prevent access to information and despite the gaps and problems with the data that is disclosed, good quality research does allow us to 'see through' government policy statements. Social science research which incorporates the use of FOI is able to document how officials operate, how little respect they have for the public, and that policy implementation is frequently very different to what officials claim. As the cases in this chapter demonstrate, Home Office policy can have a very deleterious impact on specific social groups and it shows that the Home Office deliberately contravened the UK's international legal obligations under the Refugee Convention, the EU Qualification Directive and national legislation which requires the Home Office to fairly assess asylum applications.

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[33] Including, perhaps, with journalists. Perhaps the best examples of collaborative research comes from the persistent attempt by journalists to investigate how governments treat asylum seekers (C. Knaus 'Details of Australia's asylum seeker boat turnbacks released in FOI battle' (*The Guardian*, 3 April 2017) and from the collaboration between the Evening Standard Newspaper and the Chair of the Treasury Select Committee of the House Commons to obtain information about 'Brexit-related' spending by the Home Office ('Revealed: How the embattled Home Office is spending our money on handling Brexit', *Evening Standard*, 2 May 2018).

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